

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150380
	:	TRIAL NO. B-1405139
Plaintiff-Appellee,	:	
vs.	:	
SANTINOS UNDERWOOD,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Santinos Underwood appeals his conviction for trafficking in heroin, a second-degree felony, and asserts three assignments of error. We affirm the judgment of the trial court.

This case turns on the legality of a vehicle search that uncovered heroin and other drugs. Underwood was indicted for possession of heroin and trafficking in heroin after two police officers had searched his vehicle. Underwood argued to the trial court and on appeal that he was unlawfully arrested for the minor misdemeanor offense of having a marijuana cigarette, and that any search of his vehicle thereafter was illegal. The state contends that Underwood was lawfully detained—not arrested—for an investigation, and that the marijuana cigarette sitting in plain view in Underwood’s vehicle gave the police probable cause to search the vehicle. Underwood filed three motions to suppress, which included his statements to police

and evidence found after police approached, questioned, detained, and arrested him “without reasonable suspicion.”

At the hearing on the motions to suppress, the two police officers who had arrested Underwood testified on behalf of the state. The officers pulled into a convenience store parking lot where they saw Underwood smoking a marijuana cigarette. One officer testified that he watched Underwood throw the marijuana cigarette into his vehicle and walk inside of the store while his vehicle was still running. Subsequently, the female officer saw the marijuana cigarette sitting in the cup holder and proceeded to search the vehicle. During her search, the female officer retrieved and showed the marijuana cigarette to her partner. At this time, Underwood had been detained by police and expressed to the male officer that the marijuana cigarette was all he had. But, while searching the vehicle, the female officer found a bag of marijuana, a large block and two bindles of heroin, sandwich baggies, and a digital scale. The male officer arrested Underwood, read him his *Miranda* warnings, and searched his person.

At the conclusion of the hearing on the motions to suppress, the trial court made several findings of fact and conclusions of law. The court ruled that the search was proper, and therefore denied the motion to suppress the drugs. As for Underwood’s statements to police, the court found that the first statement that Underwood made to police during his detention was voluntary. The other statements that Underwood made, after he was read his *Miranda* warnings, were also voluntary. The court denied Underwood’s motion to suppress his statements to police.

Underwood pleaded no contest to the charges. The trial court found him guilty, and, at sentencing, merged the possession count with the trafficking count.

The trial court sentenced Underwood to two years' imprisonment, ordered a two-year license suspension, and imposed and waived court costs.

Underwood has appealed, and asserts three assignments of error.

In his first two assignments of error, Underwood challenges the trial court's decision to deny his motions to suppress. "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. We defer to the trial court's factual findings if they are supported by competent and credible evidence, but we conduct a de novo review of the application of the law to those facts. *Id.*

In his first assignment of error, Underwood argues that the trial court erred in denying his motion to suppress the evidence retrieved from his vehicle during the search. Underwood asserts that he was unlawfully arrested for the minor misdemeanor offense of having a marijuana cigarette in violation of R.C. 2935.26. He claims that because the search was incident to an unlawful arrest, the evidence obtained from the search should have been suppressed. We disagree.

Whether Underwood was under arrest is irrelevant because the search was permissible under the automobile exception to the warrant requirement. The female officer in this case saw the marijuana cigarette in plain view in Underwood's vehicle, and therefore, had the necessary probable cause to search the vehicle. *State v. Buckner*, 2d Dist. Montgomery No. 21892, 2007-Ohio-4329, ¶ 9. Consequently, we hold that the trial court did not err in denying Underwood's motion to suppress the evidence discovered from the search of his vehicle. We overrule his first assignment of error.

In his second assignment of error, Underwood asserts that the trial court erred in denying his motion to suppress his statements. He argues that his

statement, “That’s all I had. I had that in my hand when you came up,” should have been suppressed because it was made prior to his *Miranda* warnings. Underwood contends that this was a violation of his privilege against self-incrimination and the Ohio Constitution. It was not.

Statements that are freely and voluntarily given without any compelling influences are admissible in evidence and are not barred by the Fifth Amendment. *R.I. v. Innis*, 446 U.S. 291, 300, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). To trigger the need for *Miranda* warnings, a defendant must be subject to custodial *interrogation*. (Emphasis added.) *See State v. Biros*, 78 Ohio St.3d 426, 439, 678 N.E.2d 891 (1997). Here, Underwood was not being questioned by police when he reacted to the marijuana cigarette that the female officer found. He freely and voluntarily made the statement, and we therefore find no constitutional violation.

As for Underwood’s post-*Miranda* statements, Underwood makes no argument as to why those statements should be suppressed, and we find none. Therefore, the trial court did not err in denying Underwood’s motion to suppress his statements. We overrule his second assignment of error.

In his third assignment of error, Underwood argues that the trial court’s finding of guilt was against the manifest weight of the evidence. Underwood pleaded no contest to trafficking in heroin and possession of heroin, thereby admitting to the truth of the facts alleged in the indictment, information, or complaint, and was found guilty. *See* Crim.R. 11(B)(2). Because he admitted to the truth of the facts alleged, the guilty finding cannot be against the manifest weight of the evidence. *See State v. Schwienher*, 1st Dist. Hamilton No. C-820210, 1983 Ohio App. LEXIS 11875, *3 (Jan. 26, 1983). We overrule Underwood’s third assignment of error, and affirm the judgment of the trial court.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on December 7, 2016
per order of the court _____.

Presiding Judge